IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1293 (SS) OF 2001

(Old No. 49195/1999)

Tirth Singh,
S/o Kunwar Singh,
R/o Chaturwal, Post Office Shivrajpur,
District – Bijnor. .....Petitioner.

Versus

1. State of U.P., through the Secretary, Forest Department Rajya Sachivalaya, Lucknow.
2. Principal Chief Conservator of Forest 17 Rana Pratap Marg, Lucknow.
3. Conservator of Forest Moradabad, Circle Distrit Moradabad.
4. Divisional Forest Officer, Division Bijnor Kotdwar (Garhwal), District Garhwal. .....Respondents.

Sri S.S. Negi, Advocate for the petitioner.
Learned Standing Counsel for the respondents.

Dated: 06.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to treat the petitioner to be a regular employee of Class IV in the service of thue State Government from the date of his initial appointment i.e. 16.03.1991 on the post held by him in the Forest Department. Further prayer has been made for a writ of mandamus commanding the respondents to make payment of difference of back wages to the petitioner which he would have

received had been treated to be the regular employees of the State Govt.

Briefly stated, the petitioner has been working in Forest Range Kaudia, Pauri Garhwal as Khoot Maharir and Gate Keeper since 16.03.1991 continuously with artificial break in service on daily wage and is getting Rs. 35/- per day.

The petitioner moved an application for regularization of his service but the same has not been considered.

The grievances of the petitioner is that the nature of duties of the petitioner is similar to that of regularly appointed employees of his category in the Forest Department of U.P. Govt. and there is not the least difference either in the nature of duties or in the quantum of work, rather the petitioner has to work more efficiently and sincerely than the regularly appointed employees of his category in the Forest department do.

Learned counsel for the petitioners has referred the judgment of the Apex Court in the case of ***State of U.P. Vs Putti Lal reported in 2002D(1) E.L.C. 524 (S.C).*** It was also a case of daily wagers of Forest Department. The Apex Court has held as under:

> *"So far as the State of Uttaranchal is concerned, a scheme for regularization of daily workers has been produced before us which prima facie does not appear to be objectionable expecting the provisions regarding qualification for regularisation. Be it stated that the qualification essential for being regularized would be the qualification as was relevant on the date of particular employee was taken in as a daily wager and not the qualification, which is being fixed under the Scheme. The fact that the employees have been allowed to continue for so many years indicates the existence or*

the necessity for having such posts. But still it would not be open for the court to indicate as to how many posts would be created for the absorption of these daily wage workers. Needless to mention that the appropriate authority will consider the case of these daily wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned as we have stated in the case of State of Uttar Pradesh, a daily wager in the State of Uttaranchal would also be entitled to the minimum of the pay scale as is available to his counter parts to in the Government until his services are regularized and he is given regular scale of pay."

After the judgment of the Apex Court, Uttaranchal Government has framed Recruitment Rules, of 2003 in accordance with the directions of the Apex Court known as Regularisation (On Group 'D' Posts) of Daily Wagers Appointment Rules, 2003. The criteria for regularisation has been mentioned under Rule 4(1), which reads as under:

"(1) Any person who:

a. *Was directly appointed on daily wage basis on a Group 'D' post in the Forest Department under Government Service before June 29, 1991 and is continuing in service as such on the date of commencement of these rules; and*

b. *Possessed requisite qualifications prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in the Forest*

Department in Group 'D' post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders."

However, liberty is given to the petitioner to move a fresh representation within a period of two weeks from the date of representation of the certified copy of the order.

In the light of the aforesaid case laws, a writ of mandamus is issued directing the respondents to consider the case of the petitioner and pass appropriate order on the representation filed by the petitioner regularizing his service in accordance with the Judgment of Apex Court in the case of Putti Lal (Supra) as well as in accordance with the recruitment Rules mentioned above within a period of two months thereafter.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

06.03.2006
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